

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	16 CR 809 (VM)
- against -	:	
	:	
LEWIS TURNBULL,	:	<u>DECISION AND ORDER</u>
	:	
Defendant.	:	
-----X		

VICTOR MARRERO, United States District Judge.

Lewis Turnbull ("Turnbull") is currently serving a sentence of 75 months' imprisonment. (See Dkt. No. 179 at 2.) By letter dated July 13, 2020, Turnbull moves this Court for compassionate release or a reduction of his sentence pursuant to 18 U.S.C. Section 3582(c)(1)(A) ("Section 3582"). (See "Motion," attached). For the reasons set forth below, the Court DENIES the Motion.

Section 3582 allows a court to reduce a term of imprisonment or supervised release after considering the factors set forth in 18 U.S.C. Section 3553(a) and finding that "extraordinary and compelling reasons warrant such a reduction." See Section 3582(c)(1)(A)(i). However, a court may do so only upon motion of the Director of the Bureau of Prisons ("BOP") or "upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt

of such a request by the warden of the defendant's facility, whichever is earlier." See Section 3582(c)(1)(A). Any reduction of sentence under Section 3582 must also be "consistent with applicable policy statements issued by the [United States] Sentencing Commission." Id. United States Sentencing Guidelines Section 1B1.13 ("Section 1B1.13") provides guidance on the circumstances under which "extraordinary and compelling reasons" exist.

In his Motion, Turnbull focuses on the risks presented by COVID-19, and in particular the unsafe conditions in prisons. He writes that prisoners are unable to socially distance themselves from one another, that they have only limited access to phone calls and the radio, and that their mail is being rejected and tampered with; Turnbull more specifically states that the prison is housing non-quarantined inmates in areas previously used by quarantined inmates without first sanitizing the area. Turnbull also argues that his family depends on him, and that while incarcerated he is unable to help them. He states that he has been experiencing stress, anger, anxiety, fear, and loss. Turnbull further highlights his rehabilitation while incarcerated, and notes that he has completed numerous programs and will be employed in construction upon release. Turnbull does not indicate whether he has submitted a request

for compassionate release on these grounds to the warden of his facility, though he suggests that the facility has "denied everyone" compassionate release. (Motion at 1.)

Because Turnbull provides no proof that he has exhausted his administrative avenues for relief with the BOP or waited over thirty days for a response, the Court will deny the Motion. See United States v. Mathis, No. 02 CR 891, 2020 WL 550645, at *1 (E.D.N.Y. Feb. 4, 2020). As the Supreme Court has instructed, "[w]here Congress specifically mandates, exhaustion is required." McCarthy v. Madigan, 503 U.S. 140, 144 (1992).

Even if the Court could consider the merits of the Motion, it would deny relief because the grounds for release or a reduction of sentence cited by Turnbull do not present the "extraordinary and compelling reasons" required by Section 3582. Rehabilitation is certainly commendable, but the application notes to Section 1B1.13 specifically state that "rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason." Section 1B1.13, Application Note 3. Accordingly, courts do not treat rehabilitation alone as an adequate basis to justify relief under Section 3582. See United States v. Lisi, No. 15 CR 457, 2020 WL 881994, at *4 (S.D.N.Y. Feb. 24, 2020). Turnbull's concerns about the coronavirus cannot justify relief on the

record currently before the Court, either. Numerous courts have found that the risks posed by the pandemic alone do not constitute extraordinary and compelling reasons for release, absent additional factors such as advanced age or serious underlying health conditions that place a defendant at greater risk of negative complications from the disease. See, e.g., United States v. Shawn Olszewski, No. 15 CR 364, 2020 WL 2420483, at *2-3 (S.D.N.Y. May 12, 2020); United States v. Jaramillo, No. 17 CR 4, 2020 WL 2306564, at *1 (S.D.N.Y. May 8, 2020). Thus, although the conditions Turnbull describes are alarming, any danger of infection with COVID-19 does not amount to an extraordinary and compelling reason for granting compassionate release. See United States v. Yeison Saldana, No. 15 CR 712, 2020 WL 2395081, at *2 (S.D.N.Y. May 12, 2020). If Turnbull has serious underlying health conditions, or can otherwise demonstrate "extraordinary and compelling reasons" that would warrant relief, he may raise those arguments in a renewed motion upon compliance with the exhaustion requirements of Section 3582.

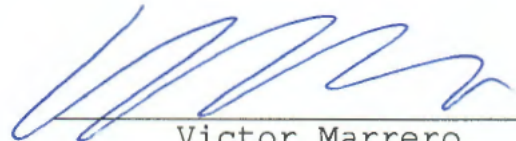
Accordingly, it is hereby

ORDERED that the motion of Lewis Turnbull ("Turnbull") for compassionate release (see attached letter) is **DENIED**. The Clerk of Court is directed to mail this Decision and Order to Lewis Turnbull, Register Number 78342-054, FTC Oklahoma

City, Federal Transfer Center, P.O. Box 898801, Oklahoma
City, OK 73189.

SO ORDERED.

Dated: New York, New York
28 August 2020



Victor Marrero
U.S.D.J.

July 13th, 2020

Dear Judge V. Marrero,

How are you? Hopefully all is well & your in good health.

My name is Lewis Turnbull. Your the Judge on my case, Docket Number "16 CR 809". You sentenced me to serve 75 months. I have a total of 45 months incarcerated, which is more than 50% of my time.

I am writing you referring to "18 U.S.C § 3582," Compassionate Release, Reduction in sentence for both, Medical & Non-Medical Circumstances. Currently, im being housed in F.C.I Schuylkill's S.H.U. I've been here since March 20th, 2020 until present. Due to the COVID-19 pandemic, the B.O.P has canceled all visitations & transfers. Since then, Attorney General William Barr set stipulations for certain inmates to be released on home-confinement. I, personally qualify for those stipulations. The COVID-19 has invaded 70% of the F.B.O.P with more than 100 Deaths, & more cases are being recorded. Here at F.C.I Schuylkill, we cannot social distance, we only have 2 calls a month, we cant listen to the radio, our mail is being rejected, & tampered with. The Jail is housing quarantined inmates around us & then putting us regular inmates in the same cells without sanitizing the area. It's a whole lot of cruel & inhumane treatment that we're being subjected to. Your Honor, I want to point out to you that you sentenced me to a term of imprisonment, not to death. The warden of the jail has denied everyone from "Compassionate Release". He is not even taking the time out to read our sorrows. To make matters worse, I live in New York City, one of the hardest hit areas from the Virus. My Grandmother's now 78 yrs old & her disability of Multiple Sclerosis is getting worse as she is living with the unpredictable nature of spasms & stress attacks because she can't hear from, or see me. I am now having a difficulty in coping with negative feelings, such as, anger, anxiety, fear, & loss. Some nights I cant sleep due to me being stressed, worrying about this virus. I am a strong source of support for my mother, grandmother, & my two younger sisters. Since i've gotten sentenced, i've grown mentally. I have completed numerous amount's of programs & rehabbed myself positively. I've gained lots of wisdom, knowledge, and

understanding about life and what being a MAN is really about. I am now worthy to lead my family in the right direction. My time away has been a very well needed reality check. I have re-evaluated Self, & learned knowledge of a Godly, educated, righteous, humanbeing. It made me learn that, I am the ONLY ONE who controls my destiny. I grew up from the 22yr old boy that you sentenced, to a 24yr old, young, respectful Man. With morals, value, principals, & integrity. I also have gained & sustained a positive outlook on life. I've finalized all of my business plans & ventures for the future. I'm more than ready to go to society & provide for my loved ones. Your Honor, I do not want to be the cause of my Grandmother's death. I'm still young, & still learning day by day. We are all survivors of trauma Your Honor. Truthfully, im sorry for having to write you, asking for "Compassionate Release", I have 24 months or less for my projected release date & 18 months until my Home Confinement date. Your Honor, im honestly scared for my family's well being, and also my own. Im stuck in the S.H.U & the Wardens' been saying he doesn't know when they'll be resuming transfers. So far, it has been postponed seven times, & nobody has any answers for us. At this point, I just want to be with my family Your Honor, nothing else. They're really in need of me. I've got my head on right and I will not be returning to prison. I have a job lined up doing paper-work in a Construction Union & good, positive people waiting for me to ensure my recidivism of returning to prison. Most of all I have a plan Your Honor. Multiple plans. So, please Your Honor, please help me once more for a better purpose. I know your the One & true person that can help me in this time of need. I will not let you down if you find it in your heart to give me the chance of a lifetime. Stay blessed, & remain strong and healthy Your Honor. Dios te Bendiga.

Please respond to me at your earliest convenience....

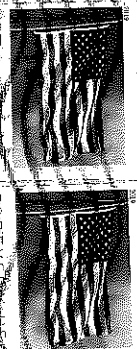
Yours Truly,
 Lewis Turnbull 78342054

DOCKET NO. (16 CR 809)

David J. Winkler #18542.054
Federal Correctional Institution Schuylkill
P.O. Box 759
Minersville, PA 17954-0759
Mailed from
Federal Correctional Institution
Schuylkill, PA

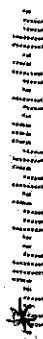
HARRISBURG PA 171

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to District Judge Victor J. Ferrero
500 Pearl Street.
NEW YORK, N.Y. 10007

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* LEGAL MAIL *